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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-1/10

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

PRESIDING OFFICER'S RULING ON
RECONSIDERATION OF PRESIDING OFFICER'S RULING NO. C2001-1/6

(Issued August 21, 2001)

Procedural History. Douglas F. Carlson filed the interrogatory, DFC/USPS-19, that is the subject of this motions practice on May 25, 2001.¹ The interrogatory seeks information from nine data fields in the Collection Box Management System (CBMS) for every collection box in the United States that is in the database. Interrogatory DFC/USPS-19 states:

Please provide the following information, in files in Microsoft Excel or similar format, from the Collection Box Management System database for every collection box in the United States that is in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

On June 4, 2001, the Postal Service filed an objection to answering this interrogatory.² Carlson filed a motion to compel the Postal Service to respond on June

¹ Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-19), filed May 25, 2001.

² Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19-21, filed June 4, 2001 (Objection).

26, 2001.³ The Postal Service filed a response to Carlson's motion to compel on July 9, 2001.⁴ The presiding officer issued a ruling on July 23, 2001, compelling a response to DFC/USPS-19 and granting the Postal Service request for protective conditions.⁵

On July 27, 2001, the Postal Service filed a motion for partial reconsideration of POR No. C2001-1/6 that requests limits on the scope of the compelled response to the interrogatory.⁶ Carlson answered the Motion for Reconsideration, and filed a cross-motion for reconsideration on August 2, 2001.⁷ The cross-motion requests removal of the protective conditions granted in POR No. C2001-1/6. Popkin also filed a motion for reconsideration on August 3, 2001.⁸ His motion supports Carlson's Cross-motion. The Postal Service responded to Carlson's Cross-motion on August 9, 2001.⁹

This ruling reaffirms the ruling in POR No. C2001-1/6 and additionally compels production of a limited alternative database not under protective conditions. It denies the Carlson Cross-motion, and Popkin's supportive motion, to compel a complete response to interrogatory DFC/USPS-19 without the encumbrance of protective

³ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, filed June 26, 2001. Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21—Erratum, filed July 2, 2001. (Motion). Carlson requested an eight-day extension of time to file this Motion. Douglas F. Carlson Motion for Extension of Time to Respond to Postal Service Objections, filed June 19, 2001. This motion was granted in POR No. C2001-1/3, issued June 29, 2001.

⁴ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19-21, filed July 9, 2001 (Response). The Postal Service had filed a motion for extension of time to file a response. Motion of the United States Postal Service for an Extension of Time to Respond to the Carlson Motion to Compel on DFC/USPS-19-21, filed June 27, 2001. This motion was granted in POR No. C2001-1/3, issued June 29, 2001.

⁵ Presiding Officer's Ruling on Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, POR No. C2001-1/6, issued July 23, 2001 (Ruling).

⁶ Motion of the United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed July 27, 2001 (Motion for Reconsideration).

⁷ Douglas F. Carlson Cross-Motion for Reconsideration and Answer to the Postal Service Motion for Reconsideration of Presiding Officer's Ruling C2001-1/6, filed August 2, 2001 (Cross-motion).

⁸ David B. Popkin Motion to Reconsideration of Presiding Officer's Ruling C2001-1/6 and Potential Motion for Late Acceptance, filed August 3, 2001.

⁹ Response of the United States Postal Service to Carlson Cross-Motion for Reconsideration and Response Regarding DFC/USPS-19 and Presiding Officer's Ruling No. C2001-1/6, filed August 9, 2001. This response also addresses Popkin's motion for reconsideration.

conditions, and denies the Postal Service's Motion for Reconsideration to place limits on the scope of the compelled response.

Postal Service Motion for Reconsideration. The Postal Service seeks reconsideration of the portion of the Ruling that compels access to the entire CBMS database. The Motion for Reconsideration is based on the contention that an inappropriate standard was used in the Ruling, and on the fact that Carlson has not articulated a use for the majority of the information in the database. The Postal Service proposal is to provide five limited data sets (including the exceptions) tailored to what it has determined is necessary for Carlson to complete his analysis.

The presiding officer is in general agreement with the Postal Service position that there "should be no obligation to provide irrelevant information even if that information is available without any burden." USPS Reconsideration at 2. However, POR No. C2001-1/6 came to the "conclusion that the requested information is likely to lead to admissible evidence that has relevance in this proceeding." Ruling at 5. Thus, all of the information requested by the interrogatory was determined to have relevance to this proceeding. The Ruling also concluded that Carlson's perceived burden in utilizing the information, which is substantial both in quantity and detail, does not make the requested material less relevant.

The Ruling used the term "over-breadth" to describe the Postal Service's perception of what data Carlson would use in his analysis compared to the quantity of information requested. The potential merit in the over-breadth argument is the acknowledgment that if the interrogatory had been more narrowly drafted, it may have reduced the burden on the Postal Service. Having previously determined that all of the information is relevant, there was no intent to imply that a portion of the data set lacked relevance. The Ruling suggested that over-breadth arguments could have been taken into consideration if the Postal Service had argued that it would be significantly less burdensome to provide a reduced data set, versus the complete data set. The Postal Service is incorrect when it interprets the Ruling as holding that irrelevant data should be provided because there is no significant burden in doing so.

The Postal Service conclusion that Carlson does not articulate any potential application for the majority of the information requested, and therefore should not be given access to that information, could lead to the development of an inappropriate standard for discovery. Taken to an extreme, it would be an onerous task to require justification for every data element in an interrogatory request, where the overall interrogatory sought relevant information. This would hinder the general policy of allowing discovery reasonably calculated to lead to admissible evidence. It would require the requestor to know what the response contained before having a chance to examine it.¹⁰ The presiding officer, in this case, interpreted Carlson's articulated uses for the interrogatory material as examples of the uses that the material may have, and not as a comprehensive list.

The Postal Service motion for reconsideration proposes to tailor the interrogatory response to what it has determined is necessary for Carlson to complete his analysis. It proposes to do this by providing five different databases each limited in geographic area, data elements, or by those containing only holiday pickup data.

The presiding officer has made the determination that all of the requested data has relevance. The Postal Service's primary concern in releasing this information is security. To allay this concern, the presiding officer allowed for provision of this material under protective conditions as suggested by the Postal Service. The majority of the data that the Postal Service now proposes to submit does not include the address field. Assumably, this is the most sensitive data element for security concerns, but the Service inexplicably also suggests that the protective conditions remain in place. These arguments are adding substantially to the length of this proceeding without apparent benefit. The concern of the presiding officer is that the database will be subdivided to such an extent that all perspective will be lost in using this data to analyze a national issue. Therefore, because the complete database is relevant to this

¹⁰ The presiding office is also aware of the potential for abuse by using discovery as a "fishing expedition." This consideration is weighed against the other relevant factors in evaluating which discovery requests are designed to lead to the discovery of admissible evidence.

proceeding and the initial Postal Service request for protective conditions has been granted, the motion upon reconsideration to limit the response to DFC/USPS-19 is denied.

The Postal Service response to the cross-motion mentions for the first time that the San Mateo database only includes the last scheduled pickup times and information on earlier pickups is maintained only at the local level. Carlson proposed to use the earlier collection times in a cost reduction analysis. The burden of requiring the response to include information that is only available at the local level for the complete database appears substantial when weighed against Carlson's proposed use.

Therefore, the Postal Service is not required to supply this information.

Motions to Eliminate Protective Conditions.

Carlson seeks reconsideration of the portion of POR No. C2001-1/6 that allows the Postal Service to respond to interrogatory DFC/USPS-19 under protective conditions.¹¹ He argues that the response should be provided without the encumbrance of protective conditions. Carlson alleges that all of the requested data is publicly available, and that by agreeing to the protective conditions he would be placing himself in a difficult legal position to pursue his other activities related to this publicly available information. He states that the protective conditions would prevent him from using this information for life, and that this is an unreasonable restriction on his First Amendment rights to discuss posted collection times and submit service related complaints. He urges the presiding officer to review the Postal Service's security concerns in relation to his FOIA arguments. He concludes by stating that the imposition of protective conditions, that he states he cannot sign, inhibits his ability to analyze data relevant to resolving this Complaint.

The Commission historically has taken reasonable steps to assist and assure that participants have access to the information necessary to argue their case before

¹¹ Popkin's motion addresses the same major points as Carlson's motion. Therefore, addressing Carlson's motion in this Ruling also addresses all of the concerns in Popkin's motion.

the Commission. The general philosophy is to facilitate access to information to the extent possible, allow participants to make their arguments based on the available information, and then weigh the significance of the information and arguments in deliberation of the matter. The Commission is not a court of law bound by strict rules of evidence, nor can it compel a participant to provide information other than through limited sanctions. Therefore, the Commission relies on some degree of cooperation amongst the participants. This includes participants using informal methods to resolve discovery disputes without involving the Commission. This also suggests that the solutions to discovery disputes might require some compromise.

POR No. C2001-1/6 follows the above philosophy. Through the implementation of protective conditions, the Postal Service's security concerns were addressed. The Postal Service proposed this solution, and stated that this would be sufficient for release of the information. At the same time, protective conditions allowed release of all of the information that the Complainant argued was necessary to proceed with his Complaint.

Carlson, in his cross-motion, argues that he cannot agree to the protective conditions because they may place him in legal jeopardy given his other pursuits. The first priority of POR No. C2001-1/6 was to provide access to information to argue the instant Complaint in this proceeding. It accomplished this goal. Carlson stated that there is a pending FOIA case in federal court that essentially litigates the public release of this information. Given the implementation of protective conditions, the presiding officer deferred to the federal court to resolve this matter. If the Complainant receives a favorable decision in the federal courts, POR No. C2001-1/6 merely delays public release of this information. If the Complainant receives an unfavorable resolution, then the Postal Service's rights remain intact.

Carlson alleges that the data under consideration is publicly available. This allegation misrepresents the issue under consideration. While each data element presumable is publicly available, there has been no showing that the aggregate

database is publicly available. If the aggregate database were publicly available, this motions practice would be moot.

Carlson argues that the protective conditions will hinder his endeavors for life. However, by the terms of the protective conditions, the protective conditions may be removed by order of the Commission. If Carlson is successful with his FOIA litigation, and he can show that this litigation would make the response to DFC/USPS-19 publicly available, he may seek termination of the protective conditions.

Consistent with the above discussion, both motions to remove protective conditions are denied.

Alternative Solutions. Carlson proposes an alternative solution that entails the release of the response to DFC/USPS-19 only to participants in this proceeding with no protective conditions. The Postal Service opposes this proposal because without protective conditions there may be no way to limit the release of this data to anyone. The presiding officer agrees with the Postal Service's conclusion.

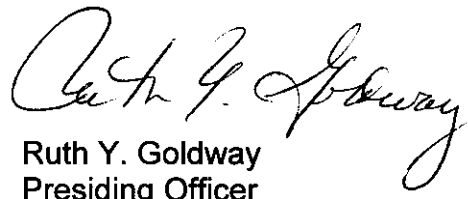
Thus far, this ruling upholds the decisions made in POR No. C2001-1/6, with the exception of requiring that only final collection times be provided. However, the presiding officer has reviewed the interrogatory request in relation to the Postal Service's security concerns, and has determined it appropriate to also compel the production of a limited data set without protective conditions. As a compromise solution, it will not completely satisfy both parties, but it may provide a majority of the information that Carlson needs and address the Postal Service's security concerns. The solution also is consistent with the Commission's philosophy of facilitating discovery so that participants have the material that they need to proceed with their case.

The most sensitive data field for security reasons appears to be the box address data field. Carlson should be able to meaningfully analyze holiday eve collections without information from the box address data field. The location ID number field still provides some location identification because it contains the ZIP Code. There has been no indication that the location ID numbers are sequential as to indicate carrier

route.¹² The remaining data fields are useful either as data elements for analysis or for placing the complete data set into proper perspective. Therefore, the Postal Service shall provide a complete data set that does not include the box address field, and is free of protective conditions. Possible objections to this compromise solution shall not delay provision of material under protective conditions per POR No. C2001-1/6.

RULING

1. The Motion of the United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed July 27, 2001, is denied consistent with the text of this ruling.
2. The Motion of Douglas F. Carlson for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed August 27, 2001, is denied.
3. The Motion of David B. Popkin for Partial Reconsideration of Presiding Officer's Ruling No. C2001-1/6, filed August 27, 2001, is denied.
4. The Postal Service shall provide an additional complete data set that does not include the box address field, and is free of protective conditions.



Ruth Y. Goldway
Presiding Officer

¹² If this is an incorrect assessment, only the ZIP Code portion of the location ID field must be provided.